

Notice of Allowability

Application No.

09/417,135

Examiner

Julian Mercado

Applicant(s)

MIURA ET AL.

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1/15/04, 11/24/03.
2. ☒ The allowed claim(s) is/are 66-80.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____ | 6 <input type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

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DETAILED ACTION***Remarks***

This Office action is responsive to applicant's reply filed November 24, 2003 which was re-submitted on January 15, 2004. Of note, applicant's reply on November 24, 2003 was within the 30-day response period granted by the October 24, 2003 Office action so as to allow for correction of an improper claim identifier. Applicant's reply on January 15, 2004 is a duplicate submission per the request of the examiner. As both responses have now been reconciled with the application file, this Office action is a response to both communications.

Acknowledgement is made of applicant's request for correction of certain items mentioned in the prior Office action. The prior Office action was a "Notice of Non-Responsive Amendment", which granted the 30-day response period to allow for correction of the improper claim identifier. The action inadvertently stated that the September 26, 2003 paper was submitted under 37 CFR 1.29(a). This statement was incorrect. The September 26, 2003 paper was in fact an after-Final communication in condition for entry by placing the application in condition for allowance, were it not for the improper claim identifier. Applicant's present reply, in correcting the status identifier of claim 68 from "amended" to "currently amended", renders the non-compliance of the after-Final amendment moot. The amendment after-Final has been entered.

Claims 66-80 are pending.

Claim Rejections - 35 USC § 102

The rejection of claims 51-80 under 35 U.S.C. 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Miura et al. (WO98/07772) has been withdrawn. The rejection has been withdrawn in view of applicant's assertion, by way of submitted arguments and the August 5, 2003 interview, that the oxypropylene unit disclosed in Miura et al. is not part of the backbone or main chain of the final polymer as required by the present claims. Applicant's independent claim 66 recites the subunit of Formula (I') as $-(\text{CH}_2\text{CH}(\text{CH}_3)\text{O})-$ while in Miura et al. the closest equivalent as previously relied upon is $-(\text{CH}_2\text{CH}(\text{CH}_2\text{O}(\text{CH}_2\text{CH}_2\text{O})_n\text{R}_1))\text{O})-$. (emphasis added, reference to independent claim 66 at paragraph (A) and Miura et al., col. 2 line 55-60) With R_1 as an alkyl group having one carbon, i.e. a methyl group, the resulting oxypropylene unit disclosed in Miura et al. is in the *side chain* of the final polymer and not part of the *main chain* as required by the present claims. (emphasis added, col. 2 line 62 of Miura et al.)

Allowable Subject Matter

Claims 66-80 are allowed.

The following is an examiner's statement of reasons for allowance: the prior art of record and to the examiner's knowledge does not teach or render obvious at least to the skilled artisan the instant invention regarding the repeating unit (I'), i.e. oxypropylene, derived from propylene oxide as part of a solid polymer electrolyte polyether copolymer main chain.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



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Patrick Ryan
Supervisory Patent Examiner
Technology Center 1700